89-1837

No. 89-

In The

Supreme Court of the United States

October Term, 1989

UNITED TRANSPORTATION UNION,

Petitioner,

v.

GRAND TRUNK WESTERN RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether a rail carrier which has historically participated in national negotiations concerning wages and national rules may, consistent with its obligations under Section 2 First of the Railway Labor Act (45 U.S.C. § 152 First) to "make and maintain agreements," refuse to participate in national negotiations and may negotiate locally where the issues are practically appropriate for national handling.

PARTIES BELOW

The parties listed in the caption, United Transportation Union and Grand Trunk Western Railroad Company, are the only parties involved in the case.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner United Transportation Union ("UTU") respectfully requests that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on February 21, 1990 in *UTU v. Grand Trunk Western Railroad Company*, 6th Cir. No. 89-1523.

OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit is not yet officially reported, but is unofficially

reported at 133 LRRM 2845, and is reprinted in the Appendix hereto at 1a-4a. The ruling of the United States District Court for the Eastern District of Michigan, Southern Division (Zatkoff, J.) was issued on April 20, 1989, is reported at 712 F.Supp. 107 (E.D. Mich. 1988), and is reprinted in the Appendix hereto at 6a-17a. The District Court's judgment is printed in the Appendix hereto at 5a.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its decision on February 21, 1990. Petitioner has not sought rehearing and is filing this petition within the time prescribed by 28 U.S.C. §2101(c). Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1254(1).

STATUTE INVOLVED

The complaint underlying this action was brought and the defenses raised arise under the Railway Labor Act [hereinafter, "RLA"], 45 U.S.C. §151, *et seq.* Relevant portions of that statute are reprinted in the Appendix hereto at 18a-19a.

STATEMENT OF CASE

Petitioner is a labor organization representing employees of Respondent Grand Trunk Western Railroad

Company [hereinafter, "GTW"] under the RLA. The underlying complaint was brought by UTU on behalf of three of its General Committees of Adjustment (subordinate units of UTU) in response to the GTW's refusal to participate in national negotiations over the parties' proposals for changes in the railroad industry's national wages and rules (although one of the General Committees has subsequently negotiated an agreement with GTW locally). The complaint challenged GTW's insistence upon local bargaining with subordinate units of UTU as inconsistent with its bargaining obligations under the RLA. The Sixth Circuit rejected UTU's arguments principally based upon its approval of the decision in *American Ry. Supervisors' Ass'n v. Soo Line R.R. ("ARSA v. Soo Line")*, 891 F.2d 675 (8th Cir. 1989), *cert. pending*, No. 89-1435 (March 13, 1990). It held that to require GTW to bargain nationally would infringe upon its rights under the RLA to designate its own representative for collective bargaining. Appendix at 4a.

The UTU seeks review of the Sixth Circuit's decision because its effect would be to undermine national agreements and to fragment collective bargaining in the railroad industry; and because it, as well as the Eighth Circuit decision it relies upon, are in conflict with the decision of the District of Columbia Circuit in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad*, 383 F.2d 255 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968) (*"Atlantic Coast Line"*). UTU recognizes the right of GTW to designate its own representative for collective bargaining, but that right would not be infringed by requiring national handling of national wage and rule issues.

REASONS FOR GRANTING THE WRIT

This case is a companion case to *ARSA v. Soo Line, supra, cert. pending* No. 89-1435 (March 13, 1990), and presents virtually identical issues affecting collective bargaining in the railroad industry, where national agreements predominate. If left undisturbed, the Sixth Circuit's decision would create uncertainty regarding existing national agreements, and impair negotiation of national agreements in the future. The Sixth Circuit's decision would also increase the likelihood of disruptions to commerce because of splintered negotiations and the fact that potential disputes involving similar issues would proliferate.

The need for the Court to grant the requested writ to address the question presented herein is apparent given the pendency of the petition for writ of certiorari in *ARSA v. Soo Line, supra*. The Sixth Circuit decision substantially adopted the Eighth Circuit's reasoning involved therein. App. at 3a-4a. In addition to the instant case and *ARSA v. Soo Line*, there are a number of pending cases concerning the national handling question at issue herein, to wit, *Railway Labor Executives' Association v. National Railroad Passenger Corporation*, D.D.C. No. 88-1816; *United Transportation Union v. Lake Terminal R.R., et al.*, N.D. Ohio, No. C 88-3414; *United Transportation Union v. Elgin, Joliet & Eastern Ry.*, N.D. Ill. No. 88-C-7708; *United Transportation Union v. Texas-Mexican Ry.*, S.D. Tex., No. L-89-7; *United Transportation Union v. Atchison, Topeka & Santa Fe Ry.*, N.D. Ill. No. 89-C-06469; *United Transportation Union v. Duluth, Missabe & Iron Range Ry.*, D. Minn. No. 5-88-178, 8th Cir. No. 90-5038MN; *United Transportation Union v. Terminal R.R. Association of St. Louis*, S.D. Ill. No. 89-3070;

United Transportation Union v. Chicago Illinois Midland Ry., C.D. Ill. No. 89-3014, 7th Cir. No. 90-2057; *United Transportation Union v. Illinois Central Ry.*, N.D. Ill., No. 88-C9607, 7th Cir. No. 90-1952; *United Transportation Union v. Houston Belt & Terminal Ry.*, et al., S.D. Tex. No. H-89-439; *United Transportation Union v. Southern Pacific Transp. Co.*, S.D. Tex. No. 90-110. The district courts in the three cases now pending in the Seventh and Eighth Circuits have adopted the reasoning of *ARSA v. Soo Line, supra*, and/or the instant case.

This Court's consideration of this matter is necessary to resolve the conflict between the District of Columbia Circuit's decision in *Atlantic Coast Line* and the Sixth and Eighth Circuit's decisions in the instant case and *ARSA v. Soo Line, supra*, respectively. Also, the Court's review is necessary to clarify the nature of the obligation of rail carriers and unions in national handling, which serves merely as the forum for negotiation of issues which are practically appropriate for national handling, but does not actually interfere with the parties' choice of representative.

Whether national handling of a particular issue is obligatory depends upon two factors: (1) "the practical appropriateness of mass bargaining" on the issue; and, (2) "the historical experience in handling any similar national movements." *Atlantic Coast Line*, 383 F.2d at 229. Under *Atlantic Coast Line*, when issues are practically suited for multi-employer bargaining and there exists a tradition of resolving such issues on a multi-employer basis, the issues must be handled on a national basis upon the insistence of either party. There is nothing in *ARSA v. Soo Line, supra*, or the decisions below to supply

any appeal to their rationale, since the National Labor Relations Act ("NLRA") precedent relied upon almost exclusively therein, is of not significant moment in this case. As this Court has observed: "[I]t should be emphasized from the outset, however, that the National Labor Relations Act cannot be imported wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes." *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969) (footnote omitted). *See also, Int'l Fed. of Flight Attendants v. Trans World Airlines*, ___ U.S. ___, 109 S.Ct. 1225, 1230 (1989) (caution against wholesale importation of NLRA provisions into RLA governed decisions).

Indeed, the stark difference between general labor law and the RLA, in light of the long history of national and regional handling that has shaped railroad labor relations was thoroughly discussed in *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 751-52 (1945) (Frankfurter, J., dissenting):

> From the point of view of industrial relations our railroads are largely a thing apart. The nature and history of the industry, the experience with unionization of the road, *the concentration of authority on both sides of the industry in negotiating collective agreements, the intimacy of relationship between the leaders of the two parties shaped by a long course of national, or at least regional, negotiations,* the intricate technical aspects of these agreements and the specialized knowledge for which their interpretation and application call, the practical interdependence of seemingly separate collective agreements – these and similar considerations admonish

against mutilating the comprehensive and complicated system governing railroad industrial relations by episodic utilization of inapposite judicial remedies.

> The Railway Labor Act of 1934 is primarily an instrument of government. As such, the view that is held of the particular world for which the Act was designed will largely guide the direction of judicial interpretation of the Act. The railroad world for which the Railway Labor Act was designed has thus been summarized by one of the most discerning students of railroad labor relations: "The railroad world is like a state within a state. Its population of some three million, if we include the families of workers, has its own customs and its own vocabulary, and lives according to rules of its own making. . . . This state within a state has enjoyed a high degree of internal peace for two generations; despite the divergent interests of its component parts, the reign of law has been firmly established." Garrison, The Railroad Adjustment Board: A Unique Administrative Agency (1937) 46 Yale L. J. 567-569. (Emphasis added).

Atlantic Coast Line relies upon an analysis of Section 2 First of the RLA (45 U.S.C. §152 First) in light of the history in the industry. *See also, First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981) (pointing out important distinctions between NLRA and RLA concerning topics of bargaining, citing *Railroad Telegraphers v. Chicago and North Western R.R.*, 362 U.S. 330 (1960)); *cf. Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n* (RLEA), S.Ct. No. 87-1589 (June 21, 1989) (*slip. op.* at 15, n. 17). The obligatory nature of national handling in the railroad

industry is not dependent upon whether national handling has commenced. That begs the question. The *Atlantic Coast Line* standards concerning *obligatory* national handling have governed for over twenty years. Fortuitous factual differences should not.

As to the Sixth Circuit's concern that forcing rail carriers into national handling amounts to interference with their choice of representatives in violation of Section 2 Third of the RLA (45 U.S.C. §152 Third), the principal ingredient of national handling is not designation of the parties' representatives, but rather national bargaining as a forum for issue resolution, rather than local bargaining by each carrier. UTU submits that this case does not actually involve interpretation or application of Section 2 Third of the RLA. GTW's rights thereunder would not be affected by an order requiring national negotiations of wages and rules.

CONCLUSION

For the foregoing reasons stated herein, Petitioner United Transportation Union respectfully asks that the writ be issued as requested herein.

Respectfully submitted,

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No. 89-1523

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED TRANSPORTATION UNION, *Plaintiff-Appellant,* v. GRAND TRUNK WESTERN RAILROAD CO., *Defendant-Appellee.*	)	ON APPEAL from the United States District Court for the Eastern District of Michigan

Decided and Filed February 21, 1990

Before: NELSON AND BOGGS, Circuit Judges, and BERTELSMAN, District Judge.*

PER CURIAM. The plaintiff in this case, the United Transportation Union, brought an action for declaratory and injunctive relief seeking to compel the defendant, Grand Trunk Western Railroad Company, to participate in national multi-employer collective bargaining as opposed to individual bargaining. The district court granted summary judgment for the defendant. *United Transp. Union v. Grand Trunk W. R.R. Co.*, 712 F.Supp. 107 (E.D. Mich. 1989) (Zatkoff, J.). We agree with the district court's

* The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

decision, which finds support in a subsequent decision by the Court of Appeals for the Eighth Circuit.

I

Defendant Grand Trunk, a small Class 1 railroad, has approximately 943 miles of track in Indiana, Illinois, Michigan, and Ohio. Its employees are represented by the plaintiff union. Although it had engaged in national multi-employer bargaining in the past, Grand Trunk decided not to do so in the round of bargaining scheduled for 1988. On April 4, 1988 – before bargaining began – Grand Trunk notified the union that "the carrier intends to conduct negotiations in connection with this notice on its own behalf. GTW is not authorizing a national conference committee to represent us in these negotiations." This lawsuit followed.

The district court held that nothing in the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, required the railroad to engage in national bargaining. The court observed that the cases upon which the union relied held only that a railroad could not withdraw from national bargaining once it had commenced. *United Transp. Union*, 712 F.Supp. at 111. The court also noted that an argument similar to the union's had been rejected in *American Railway and Airway Supervisors Association v. Soo Line Railroad*, 690 F.Supp. 802 (D. Minn. 1988). That decision has since been affirmed by the Court of Appeals for the Eight Circuit. *American Ry. and Airway Supervisors Ass'n v. Soo Line R.R.*, 891 F.2d 675 (8th Cir. 1989) ("*Soo Line*").

II

In the present appeal the union urges that the railroad must engage in national, multi-employer bargaining if: (1) the issues are practically suited for national bargaining; and (2) such issues have traditionally been resolved through multi-employer bargaining. The union relies on *dicta* to that effect in *Brotherhood of Railroad Trainmen v. Atlantic Coastline Railroad*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968).

We find no authority for the union's position in the Railway Labor Act. The Act does, to be sure, require the parties to "exert every reasonable effort to make and maintain agreements," 45 U.S.C. § 152, First, and requires the railroad to negotiate in good faith. *Chicago & N.W. Ry. v. United Transp. Union*, 402 U.S. 570, 574-75 (1971). But the Act expressly preserves each party's right to choose its own bargaining representative:

> "Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influences or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." 45 U.S.C. § 152, Third.

Relying on the latter section, the Eighth Circuit's *Soo Line* opinion rejects an argument identical to that made by the union here:

> "we are aware of no decision that construes this duty to obligate the railroad to bargain for a national contract through a national bargaining representative. The unions' argument ignores the statutory right of each party to designate a

> representative with whom the other party's representative must negotiate." *Soo Line*, 891 F.2d at 677-78.

A narrow exception to the freedom of choice rule exists "where one of the negotiating parties attempts to withdraw from multi-party bargaining after negotiations have begun." *Soo Line*, 891 F.2d at 678, citing a case under the National Labor Relations Act, *Charles D. Bonanno Linen Service Inc. v. NLRB*, 454 U.S. 404, 410-11 and n.5 (1982). Here, however, the union does not deny that Grand Trunk announced its intention before bargaining began. No court of appeals has compelled national bargaining where a party opted for individual bargaining before the start of negotiations. For us to do so would be to fly in the teeth of the statute.

Accordingly, and for the reasons stated in Judge Zatkoff's opinion, 712 F.Supp. 107, the judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED TRANSPORTATION UNION,

Plaintiff,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,

Defendant.
_____/

CASE NO. 88-CV-73971-DT

HONORABLE LAWRENCE P. ZATKOFF

JUDGMENT

IT IS ORDERED AND ADJUDGED that this action is hereby DISMISSED pursuant to the Memorandum Opinion and Order dated April 20, 1989.

Dated at Detroit, Michigan, this 20th day of April, 1989.

DAVID R. SHERWOOD
CLERK OF THE COURT

BY: /s/ R. P. Nartwald
DEPUTY CLERK

APPROVED:

/s/ L. P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED TRANSPORTATION UNION,

Plaintiff,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,

Defendant.
_____/

CASE NO. 88-CV-73971-DT

HONORABLE LAWRENCE P. ZATKOFF

MEMORANDUM OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 20th day of April, 1989.

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF UNITED STATES DISTRICT JUDGE

INTRODUCTION

Plaintiff, United Transportation Union (UTU), has brought this action seeking to compel the defendant, Grand Trunk Western Railroad Company (GTW), to continue to participate in national bargaining. Plaintiff seeks both declaratory and injunctive relief. Presently before the Court is defendant's Motion to dismiss or in the alternative for Summary Judgment.

I. DISMISSAL

Defendants address their motion to dismiss under Fed. R. Civ. P. 12(b)(6). A motion to dismiss for failure to

state a claim under Rule 12(b)(6) tests the legal sufficiency of the Plaintiff's Complaint. *Davey v. Tomlinson*, 627 F.Supp. 1458, 1463 (E.D. Mich. 1986); *Hudson v. Johnson*, 619 F.Supp. 1539, 1542 (E.D. Mich. 1985). "In evaluating the propriety of a dismissal under Rule 12(b)(6), the factual allegations in the complaint must be treated as true." *Janan v. Trammell*, 785 F.2d 557, 558 (6th Cir. 1986); *Windsor v. The Tennessean*, 719 F.2d 155, 158 (6th Cir. 1983), *cert. denied* ___ U.S. ___, 105 S.Ct. 105, 83 L.Ed.2d 50 (1984). Plaintiff's claims shall not be dismissed unless it is established that plaintiff cannot prove beyond doubt any set of facts to support its claim that would entitle plaintiff to relief. *Janan*, 785 F.2d at 558. In a 12(b)(6) motion the Court does not look beyond statements in the Complaint. In the case at bar, however, it is necessary for the Court to consider extraneous matters. Therefore, defendant's alternative request for relief, summary judgment, will be decided.

II. SUMMARY JUDGMENT

Summary judgment is appropriate where no genuine issue of material fact remains to be decided and the moving party is entitled to judgment as a matter of law. *Blakeman v. Mead Containers*, 779 F.2d 1146 (6th Cir. 1986); Fed. R. Civ. P. 56(c). "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, ___, 106 S.Ct. 2548, 2552-2553 (1986). In applying this standard, the Court must view all materials

offered in support of a motion for summary judgment, as well as all pleadings, depositions, answers to interrogatories, and admissions properly on file in the light most favorable to the party opposing the motion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 S.Ct. 2502, 2510 (1986); *United States v. Diebold*, 368 U.S. 654 (1962); *Cook v. Providence Hosp.*, 820 F.2d 176, 179 (6th Cir. 1987); *Smith v. Hudson*, 600 F.2d 60 (6th Cir. 1979), *cert. dismissed*, 4444 U.S. 986 (1979). In deciding a motion for summary judgment, the Court must consider "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at ___, 106 S.Ct. at 2512. Although summary judgment is disfavored, this motion may be granted when the trial would merely result in delay and unneeded expense. *Poller v. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 473, 82 S.Ct. 486, 491 (1962); *A.I. Root Co. v. Computer/Dynamics, Inc.*, 806 F.2d 673, 675 (6th Cir. 1986). Where the non-moving party has failed to present evidence on an essential element of their case, they have failed to meet their burden and all other factual disputes are irrelevant and thus summary judgment is appropriate. *Celotex*, 477 U.S. at ___, 106 S.Ct. at 2553; *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. ___, 106 S.Ct. 1348, 1356 (1986) ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." (footnote omitted)).

III. BACKGROUND

Defendant GTW, a small Class I railroad with its headquarters in Detroit, Michigan, operates

approximately 943 miles of railroad in the states of Indiana, Illinois, Michigan and Ohio. The present GTW is the product of a merger, and includes the original GTW and the former Detroit, Toledo & Ironton Railroad (DTI) and the former Detroit, Toledo & Shoreline Railroad (DTSL). GTW is the successor to collective bargaining agreements between plaintiff, UTU and each of the merged railroads.

The plaintiff, UTU, represents GTW's employees who work in the crafts or classes of conductors, brakemen and yardmasters. The UTU has subunits, known as General Committees of Adjustment, which are headed by General Chairmen. Five different UTU General Committees have jurisdiction over GTW's UTU-represented employees. The Brakemen and Conductors Road General Committee of Adjustment has jurisdiction over brakemen and conductors who work on road crews on rail lines of the premerger GTW. A road crew typically operates trains between cities or rail yards. The Grand Trunk Yard Committee has jurisdiction over brakemen and conductors who work on yard crews on lines of the premerger GTW. The yard crew operates trains within the limits of a rail yard or switching district. The General Grievance Committee of Adjustment represents employees in road and yard service who work on lines of the former DTI. The General Committee of Adjustment has jurisdiction over road and yard brakemen and conductors who work on lines of the former DTSL. The Yardmaster's Department of the UTU represents the yardmaster's craft on the GTW, DTI and DTSL. The yardmasters, formerly an independent union, has merged into UTU.

IV. DISCUSSION

Collective bargaining agreements have no fixed termination date, but become amendable upon expiration of

a contract moratorium. At that time, both parties to the agreement become free to serve notices under Section 6 of the Railway Labor Act, 45 U.S.C. §156, and make proposed changes in the existing collective bargaining agreement. Collective bargaining can either be multi-employer bargaining, where a group of employers bargain with a union, or individual bargaining, where a single employer and a union bargain. Although railroads have historically bargained in multi-employer groups, the form of such multi-employer bargaining has changed over time. Prior to 1972 most railroads bargained in regional groups because those groups best served the practical and economic needs of railroads. More recently, a single bargaining agent has represented Class 1 railroads in multiemployer bargaining and such bargaining has been in the form of national bargaining.[1] Those railroads and unions desiring to participate in national bargaining for any round of bargaining give their power of attorney to their respective bargaining agents. For the railroads, the bargaining agent has been the National Railway Labor Conference (NRLC) through its National Carriers Conference Committee (NCCC). The NCCC is comprised of all representatives of each of the major Class 1 railroads and a single representative of small carriers, such as GTW. (See Affidavit of Emerson M. Bouchard, pages 3-4).

A. CURRENT GTW NEGOTIATIONS

GTW has in the past participated in national bargaining, which usually occurs every three or four years when railroad collective agreements are subject to renegotiation. At the beginning of prior rounds of national bargaining, GTW has given its written power of attorney to

the NCCC to act on its behalf. The most recent national collective bargaining agreements between the NCCC, on behalf of participating carriers, including GTW, and the UTU and Yardmasters were executed, respectively, October 31, 1983 and June 15, 1987, and became amendable on April 1, 1988.

In the present case GTW decided not to participate in national bargaining with other Class 1 railroads. Consequently, GTW did not give a power of attorney to the NCCC and advised Charles Hopkins, Chairman of the NRLC, of its decision not to participate in national bargaining. GTW served Section 6 notices on each UTU General Chairman on April 4, 1988, proposing changes in its collective bargaining agreements. GTW Section 6 notices, including those addressed to the UTU General Committees, advised that "the carrier intends to conduct negotiations in connection with this notice on its own behalf. GTW is not authorizing a national conference committee to represent us in these negotiations."

The General Chairman in each of the five UTU general committees acknowledged receipt of GTW's Section 6 notices and agreed to meet with GTW and discuss those notices, without prejudice to their position that national bargaining was required. A GTW labor relations representative met with all GTW unions, including the five UTU General Committees, over the matters raised by GTW's Section 6 notices. GTW met with General Chairmen Roberts and Thompson on April 19, 1988, and with General Chairmen Twyford, Criswell and Miller on April 26, 1988. GTW further met with General Chairmen Twyford and Criswell on May 24, 1988 to discuss GTW's

bargaining proposals. Subsequent to these initial meetings, General Chairmen Criswell and Twyford served GTW with Section 6 notices on July 25, 1988, proposing their own modifications in the parties agreement.

It is alleged by GTW that it reached agreement on new labor contracts on July 19, 1988 with General Chairman Thompson, who represents the Yard Crews of the premerger GTW, and General Chairman Roberts, who represents Road and Yard Crews of the former DTI. It is further alleged by GTW that these agreements were ratified by the rank-and-file members of the General Committees, and their terms have been put into effect on GTW. UTU disputes these allegations. In any event, UTU has filed suit seeking to enjoin GTW from further negotiations on a local level and to force them to participate in national handling. UTU alleges that GTW has violated the Railway Labor Act (Act), by refusing to participate in national handling of the present contract negotiations. Plaintiff argues that national handling for purposes of negotiating a new collective bargaining agreement, under the circumstances here, is obligatory under the Act.

V. LAW AND ANALYSIS

Under the Act, both carriers and their employees have a duty to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." in order to avoid any interruption to commerce. 45 U.S.C. §152 First. By giving notice pursuant to 45 U.S.C. §156 ("Section 6 Notice"), either party can propose a change in their agreement. Under the Act, both carriers and employees have the right to designate their own representatives for bargaining:

> Representatives, for the purposes of this chapter shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.

45 U.S.C. §152, Third.

The language of the Act explicitly guarantees each party's right to select its own representative "without interference, influence or coercion." 45 U.S.C. §152 Third. Therefore, under the Act, GTW cannot be forced to designate the NRLC to negotiate on its behalf. Indeed, GTW was free to bargain on its own behalf.

Having concluded that GTW is free to bargain on its own behalf, the question left to be resolved is whether it is "obligated" to participate in national handling. In other words, is GTW obligated to bargain with a coordinated labor bargaining representative such as the Cooperating Railway Labor Organization (CRLO) as well as with the NRLC?

The leading case dealing with the issue of obligatory national handling is *Brotherhood of Railroad Trainmen v. Atlantic Coastline Railroad Company*, 383 F.2d 225, 229 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968). In that case, the district court held that the Act authorized a group of carriers to insist upon national handling of negotiations over the issue of "crew consist." After examining the history of bargaining over that issue, the D.C. Circuit reversed, holding that national handling was not obligatory. The court explained:

> The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest. Such bargainings is certainly lawful, however. *Whether it is also obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point* and of the historical experience in handling any similar national movements. The history and realities of crew consist bargaining in this industry impel the conclusion that mass handling was not required by the statute for bargaining on that issue. (Emphasis added)

Id. at 229.

This language, according to UTU, means that when issues are practically suited for multi-employer bargaining and there exists a tradition of resolving such issues on a multi-employer basis, the issues *must be* handled on a national basis. (Emphasis added). UTU then goes on to cite a list of cases in which various courts found that issues such as wages, health and welfare, vacation and jury duty were required to be dealt with on a national multi-employer basis. See *Chicago, Burlington & Quincy R.R. v. Railway Employees' Department*, 301 F.Supp. 603 (D.D.C. 1969); *Delaware & Hudson Ry. Co. v. United Transportation Union*, 450 F.2d 603 (D.C. Cir.), cert. denied, 403 U.S. 911 (1971); *United Transportation Union v. Burlington N. Inc.*, 325 F.Supp. 1125 (D.D.C. 1971).

A review of these cases, however, reveals that courts have found national handling to be obligatory only after the parties had commenced national bargaining and then one attempted to withdraw or take action inconsistent with the national handling. In the case at bar, GTW

notified the UTU subunits of its intention to bargain locally before national bargaining commenced.

A case similar in fact to this case was recently decided in the United States District Court in Minnesota; *American Railway and Airway Supervisors Association v. Soo Line Railroad Co.*, 690 F.Supp. 802 (D. Minn. 1988), *appeal pending*, No. 88-5350 MN (8th Cir. docketed August 23, 1988). In *Soo Line*, a rail labor organization brought action on behalf of its members seeking to compel the railroad to continue to participate in national bargaining. The railroad filed a counterclaim asserting that the unions violated that Railway Labor Act by refusing to negotiate directly with the railroad. The court held that the railroad, which notified the unions of its intention to bargain locally, before national bargaining commenced, was not required to engage in national handling of health and welfare plans. In so holding, the court stated: "no decision has been identified that required a party to engage in national bargaining under similar circumstances. The Act itself fails to recognize or address the issue of national handling in any fashion whatsoever." *Id.* at 807. The court added that the statutory silence and the lack of precedent imposing national handling under similar circumstances enforced its decision not to impose national handling. *Id.*

In the case at bar, UTU fails to cite any statutory or judicial authorities mandating that GTW participate in national bargaining. While UTU's complaint alleges GTW violated Section 2, First, of the RLA, 45 U.S.C. 152, First, by refusing to bargain with UTU on a national basis, UTU does not identify any language in Section 2, First, requiring such bargaining. UTU relied solely on an old line of cases arising in D.C. Circuit. Contrary to UTU's assertion,

none of those cases held that "a union is free to decline local negotiations and to insist that the dispute be resolved on a nationwide, multi-employer basis."

The Court finds it interesting to note that two factors cited by the Atlantic Coastline dicta, "practical appropriateness of mass bargaining" and "historical experience," have been undercut by the changing structure of the railroad industry after passage of the Staggers Rail Act of 1980, which required that railroads operate in a more competitive environment. Public Law No. 96-448, 96th Congress, 1st session, 1980. Prior to passage of the Staggers Act, railroads could collectively agree on railroad rate increases, which would go into effect if approved by the Interstate Commerce Commission (ICC). Typically, after agreeing to a national wage increase with their unions, railroads would apply to the ICC for approval to flow the cost of the wage increase through to shippers in a general rate increase. *See, e.g.*, General Increase, Bulk Carriers Conference 353 ICC 24, 29 (1978) (considering wages and health and welfare benefits costs); Increases In Freight Rates 1973, 346 ICC 305 (1973) (considering increase costs to offset retirement tax increase). The Staggers Act, however, fazed out collective rate setting and required that railroad rates be individually set by railroads. Public Law No. 96-448, Section 219, codified at U.S.C. §10706 (1980). See also, e.g., HR Rep. No. 96-1430, 96th Cong., 2nd Session, 113-14 (1980). Congress clearly contemplated that railroads would have greater individual freedom to determine their own cost structures, including labor costs. *See, e.g.*, HR Rep. No. 96-1035, 96th Cong., 2nd Session, 42-43, 119-21 (1980). Because labor costs are a significant component of costs,

requiring national bargaining would be inconsistent, not only with the Railway Labor Act, but with the goals of the Staggers Act. Accordingly, even if the D.C. Circuit's dicta could be given the meaning UTU's desires, this Court finds that national bargaining under the circumstances of this case is no longer "practically appropriate."

CONCLUSION

Accordingly, Defendant's Motion for Summary Judgment is hereby GRANTED. Plaintiff's request for injunctive relief is DENIED.

IT IS SO ORDERED.

/s/ Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

FOOTNOTES

[1] The parties have not given a precise definition of "national bargaining," also referred to as "national handling." It appears that national bargaining is the practice of bargaining between the nation's railroads and their employees on a nationwide, multi-employer basis, rather than engaging in carrier by carrier local negotiations.

Statutes Relied Upon:

Railway Labor Act, 45 U.S.C. § 151, *et seq.* (Excerpts)

Section 2 First, 45 U.S.C. § 152 First

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Section 2 Third, 45 U.S.C. § 152 Third

Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Section 6, 45 U.S.C. § 156

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be

agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.